

Lester Collins  
*d/b/a* Jakey's Pub  
2930 W. 15<sup>th</sup> Avenue  
Gary, Indiana 46404

RR45-02653  
District 1

## **PROPOSED FINDINGS OF FACT AND CONCLUSIONS OF LAW**

### **I. BACKGROUND OF THE CASE**

The Applicant, Lester Collins, *d/b/a* Jakey's Pub (Applicant), 2930 West 15th Avenue, Gary, Lake County, Indiana, filed his application for the transfer of ownership and location of a Type-210 Alcohol and Tobacco Commission (ATC) permit, permit #RR45-02653. Said application was assigned to the Lake County Local Board (LB) and the LB heard the application on or about July 2, 2002, and recommended denial of this application. The recommendation was adopted by the ATC on or about July 23, 2002.

The Applicant, by attorney Stephen M. Brenman, filed a timely notice of appeal and the matter was set before ATC Hearing Judge Daniel M. Steiner (HJ). The matter was heard on December 18, 2002 at 2:00 p.m. At that time, witnesses were sworn, evidence was heard and the matter was taken under advisement. The HJ now presents his Proposed Findings of Fact and Conclusions of Law for recommendation to the ATC for its consideration, based on the LB hearing and the ATC appeal hearing.

### **II. EVIDENCE AT THE HEARING**

#### **A. WITNESSES**

The following witnesses were sworn and provided testimony at the appeal hearing:

1. Megan R. Pritchard ("Pritchard"), a paralegal for attorney Brenman. She stated that she

does measurements regarding applications as to the law regarding residential areas. She stated that the proposed premises are in a good state of repair compared to some of the other buildings and lots in the immediate area and that the premises is properly zoned by the city of Gary for a restaurant or lounge. She stated that on the sign-in sheet at the LB hearing that numerous, to wit: 14 were from a distance of at least 8 to 10 miles away from the proposed premises. She further stated that on the petition submitted by the remonstrators at the LB hearing that many of the signatories either gave improper addresses, that more than one persons' name was signed by the same person or that signatures were from people who lived in other towns. By her estimation, the approximate number of people who would fall into these categories was 61. Through witness Pritchard, it was shown that a recent petition done in support of this permit garnered 342 signatures, from within the city limits of Gary, who are in support of this permit.

2. Lester Collins (Collins), a construction worker who purchased this property and an ATC permit and cannot recover the money he has expended for the permit and the improvements to the building, if he is denied the permit. He stated that he will not use this permit as a watering hole, as some people have apparently suggested or as a liquor store. Collins believes he is well qualified to hold a permit as he has never been charged with a felony, an ATC violation or a federal alcohol and tobacco violation. He is of good reputation and of sound mind and does not have any other ATC permits and would use this premises as a restaurant. He does not intend to be open on Sunday, as he has not applied for a type 220 ATC permit and he intends for his normal hours on the other six days of the week to be from 10 a.m. until midnight. He said that other businesses have used this building for a restaurant for approximately the last seven or eight years, that he will not have a family room or otherwise allow minors on the premises. Regarding the signatures previously mentioned, which were testified to by Pritchard, he said he either obtained personally or supervised signatures on this petition. On cross-examination, Collins said he only contacted one person regarding locating a permit here and that was Matthew Whittington, who said he was opposed to the permit. Collins was later recalled by Brenman. Collins acknowledged that he had been stopped for DWI in 1975 and that the charge was later reduced to reckless driving, for which he plead guilty. He stated that he has never had any other alcohol related charges and that he is not an alcoholic. He further stated that he would not sell alcoholic beverages for carry out from this location.
3. Virgil D. Lincoln, Sr. ("Lincoln"), he does not live in the immediate area of this premises, but is a self employed electrical contractor who has known Collins for many years and Collins has served as his mentor. He has lived in the city of Gary all of his life and he is active in the Miller Citizens Corporation and the Gary Chamber of Commerce and many other community and charitable activities and believes that Collins is of good reputation and qualified to hold this permit.

4. James Brown ("Brown"), neighbor of Collins, living in the same block as Collins, and he believes that Collins is well presented in the community and that there is a need for these services at the proposed location and it would have a positive impact on the neighborhood.
5. Royal Logan ("Logan"), neighbor of Collins. He has known Collins for 15 years and he says Collins has a good reputation in the community and he sees nothing negative about these premises.
6. Rev. James Washington ("Washington"), 1136 Fillmore Street, Gary, IN. It was not clear from Reverend Washington's testimony whether he was simply opposed to drinking, opposed to an ATC establishment in this particular location, or opposed to Collins holding a permit period. Washington did state that of the 600-700 signatures on petitions, which were submitted at the appeal hearing, that he witnessed approximately 400 of those himself. He did state that there are many other ATC permit premises within a mile and a half of this proposed premises and that he does not believe there is a need and believes that having this premises at this location will have a negative impact on those children who attend a middle school, approximately a block away, and on children playing in a park across the main thoroughfare from these proposed premises. He further stated that he has been assigned to his particular church in this neighborhood for the last eight months and that he has lived in Gary for a total of 27 years.
7. Jimmy McKnight (McKnight), stated that he is opposed to a premises at this location and that he also observed many of the signatures on the petition, which was admitted at this particular hearing.
8. Mary Brown ("Brown"), stated that she is a Gary city councilperson, whose district includes the location of these proposed premises. She says there is no need for another liquor service establishment in this area and that she has talked with many people regarding this and that they are all opposed to this premises locating there. She further stated that she is working to revive and rehabilitate this area of Gary and does not believe that this premises located at this location would be conducive to that.
10. Arthur Green ("Green"), 2969 West 19<sup>th</sup> Avenue, Gary, IN. He has lived in this area since 1957 and is concerned about school kids in this area if this premises were allowed to be open. His four grandsons are in this area and he believes that a restaurant at this location would be acceptable, but does not want alcohol at this location.
11. Lucille Booker ("Booker"), 2716 West 15<sup>th</sup> Avenue, Gary, IN. She stated that she has lived in this area for 50 years and is opposed to the location of an ATC premises at this particular location.

12. Robert Williams ("Williams"), 2635 West 17<sup>th</sup> Avenue, Gary, IN. He stated that there are no liquor stores in the immediate area, but as a person formerly dependent on alcohol, he is opposed to this location as possibly contributing to a problem of other people becoming dependent on alcohol.

B.  
EXHIBITS

The following exhibits were offered at the ATC appeal hearing:

1. Applicant's Exhibit 1 (in 20 parts), which is entitled "Petitioners Appellant Argument, Statutes, Cases and Exhibits" and contains many of the items for which witness Pritchard testified. This exhibit was admitted without objection.
2. Applicant's Exhibit 2, a copy of the petition submitted by the remonstrators at the LB hearing. This exhibit was highlighted by witness Pritchard as to the persons that she believes either did not sign the petition or do not live in reasonable proximity to the location. This exhibit was admitted without objection.
3. Applicant's Exhibit 3, a letter from the previously mentioned Virgil Lincoln, Sr., in support of the application of Collins.
4. Applicant's Exhibit 4, a letter from a Ken Willis in support of the application of Collins.
5. Applicant's Exhibit 5, a copy of an article from the December 14, 2002 Gary Post Tribune, regarding preparation for today's hearing. This exhibit was admitted over the objection of Reverend Washington, who did not want the exhibit admitted because Mr. Brenman had previously closed his evidence and was given the opportunity to reopen.
6. Applicant's Exhibit 6, a copy of an article from the Gary Post Tribune of Saturday, November 16, 2002. Reverend Washington voiced the same objection and this exhibit was admitted over his objection.
7. Remonstrators' Exhibit A, a letter dated December 9, 2002, from Indiana State Senator Earline S. Rogers, who resides and represents the area in which the proposed premises would be located. Senator Rogers stated her opposition to the issuance of this permit. Attorney Brenman objected to it because the letter referenced a liquor store rather than a restaurant and he felt it was therefore fatally defective. The exhibit was admitted over

objection.

8. Remonstrators' Exhibit B, a letter from Matthew Whittington, chairman of Trustee Board of the Western Christian Community Church, 2826 W. 15<sup>th</sup> Avenue, Gary, IN 46404. Attorney Brenman objected on the same basis. The exhibit was admitted over objection.
9. Remonstrators' Exhibit C, a letter from Lucille F. Upshaw, principal of the Tolleston Middle School, 2700 W. 19<sup>th</sup> Avenue, Gary, IN 46404, stating her objection to the issuance of this permit. Attorney Brenman objected on the same basis. The exhibit was admitted over objection.
10. Remonstrators' Exhibit D, a letter in which admission was denied on the basis of lack of relevance.
11. Remonstrators' Exhibit E (in two parts), a petition in which the first part is captioned, "We the undersigned oppose the opening of a liquor establishment at 2930 W. 15<sup>th</sup> Avenue, Gary, Indiana". These petitions contain approximately 419 signatures. The second part of the petition is captioned, "Families opposing liquor license location 2930 W. 15<sup>th</sup> Avenue. As a concerned parent/guardian and child/children, we strongly protest the issuance of a liquor license at the above address. Jakey's Pub is too close to our church, our parks and our school. For God's sake, please deny the request for a liquor license at this establishment." Approximately 112 documents captioned this way were received into evidence. While there are many more than 112 names listed on these various documents, it appears that: 1) most of the names were signed by the same person, particularly in the case of children's names being signed by a parent; and 2) there is no indication of whether the children are of legal age or not; therefore, each of these documents is counted as one statement in opposition to the issuance of this permit. This exhibit was admitted over the objection of attorney Brenman as far as ability to verify the signatures thereon and the method in which the signatures were obtained.
12. Remonstrators' Exhibit F, G, H, photographs of the front of the premises from the front of the neighboring church and of the park across the street from the proposed premises. Exhibits admitted without objection.
13. Remonstrators' Exhibit I, a handwritten document by Reverend Washington showing ATC premises, which he stated are within 1 ½ miles of these premises. Washington stated that he had performed the measurement of these distances and certified that each of them are within 1 ½ miles of the proposed premises of the Applicant herein. This exhibit was admitted without objection.

### III.

### PROPOSED FINDINGS OF FACT

1. That the Applicant, Lester Collins, *d/b/a* Jakey's Pub, 2930 West 15th Avenue, Gary, Lake County, Indiana, 46404, is an Applicant for an ATC, type 210 permit, permit #RR45-02653. (ATC file)
2. That the standard for approval and review regarding a transfer of a permit is different and more strict than a renewal of a permit. 905 IAC 1-27-4 states as follows:

Location—The commission, upon application for a new or upon an application for transfer of location of an existing permit, shall also investigate the desirability of the permit in regard to the potential geographical location of said permit. In making this determination, the commission may consider, but is not limited to the following factors: a) the need for such services at the location of the permit; b) the desire of the neighborhood or the community to receive such services; c) impact of such services on the other businesses in the neighborhood or community; d) impact of such services on the neighborhood or community. (905 IAC 1-27-4)
3. That the LB found by substantial evidence that this application should not be granted and cited 905 IAC 1-27-4 (b)(c)(d). (record of LB proceedings)
4. That the weight of the evidence at the appeal hearing was that the neighborhood is, in fact, in opposition to this permit, that evidence supports the findings under 905 IAC 1-27-4 a) the need for such services at the location of the permit; b) the desire of the neighborhood or the community to receive such services; and, c) impact of such services on the neighborhood or community. Those positions are supported by the testimony of those who observed the signatures on the petition opposed to the application, namely Washington and McKnight. The finding that there is no desire in the neighborhood or community to receive such services is supported by the testimony of Brown and Washington and the finding that there would be a negative impact of such services on the neighborhood or community is supported by the testimony of Washington, Brown and Green. (record of ATC appeal hearing)
5. That any Conclusion of Law contained in the foregoing Findings of Fact is hereby adopted by the ATC as their Conclusions of Law.

IV.

CONCLUSIONS OF LAW

1. That the Applicant, Lester Collins, *d/b/a* Jakey's Pub (Applicant), 2930 West 15th Avenue, Gary, Indiana, 46404, is an Applicant for an ATC, type 210 permit, permit #RR45-02653. (ATC file)
2. The LB properly found that there was basis for denial of this permit citing 905 IAC 1-27-4 (b)(c)(d). (record of LB proceedings)
3. That the evidence at the ATC appeal hearing supports a finding by substantial evidence that pursuant to 905 IAC 1-27-4 (a) that there is no need for such services at the location of the permit; b) that there is insufficient desire of the neighborhood or community to receive such services; d) that such services would negatively impact the neighborhood or community. (record of ATC appeal hearing)
4. That the recommendation by the LB and the adoption of that recommendation by the ATC was not: 1) arbitrary, capricious, an abuse of discretion or otherwise not in accordance with the law; 2) contrary to a constitutional right, power, privilege or immunity; 3) in excess of or contrary to statutory jurisdiction, authority, limitations or rights; 4) without observance of procedure required by law; or 5) unsupported by substantial evidence. (IC 7.1-3-19-11)

THEREFORE, IT IS ORDERED, ADJUDGED, AND DECREED that the finding of the LB of denial of this application for Lester Collins, *d/b/a* Jakey's Pub, 2930 W. 15<sup>th</sup> Avenue, Gary, Indiana, 46404, and the adoption of the recommendation by the ATC is hereby upheld and the appeal of the Applicant is hereby denied.

Date \_\_\_\_\_

\_\_\_\_\_  
Daniel M. Steiner, Hearing Judge